

REMARKS

This responds to the Office Action dated May 27, 2008.

Claims 1, 5-7, 9, 18 and 20-21 are amended, claims 3 and 19 are canceled, and no claims are added. Thus, claims 1, 2, 4-7, 9-18 and 20-30 are now pending in this application.

§101 Rejection of the Claims

Claims 1-7 and 9-30 were rejected under 35 U.S.C. § 101 because the claimed invention is not supported by either a specific and substantial asserted utility or a well established utility. Applicant respectfully traverses the rejection for at least the following reasons.

Applicant respectfully requests reconsideration of this rejection in view of the amended claims. In addition, Applicant incorporates by reference the previous arguments traversing this rejection from the Applicant's response of April 1, 2008.

Applicant respectfully requests withdrawal of the §101 rejection of the claims.

§112 Rejection of the Claims

Claims 1-7 and 9-30 were rejected under 35 U.S.C. § 112, first paragraph, as lacking adequate description or enablement. Applicant respectfully traverses. With respect to this rejection, the Applicant refers to the discussion above with respect to the §101 rejection of the claims. Based at least on the specification citations made in that discussion, Applicant respectfully asserts that one of skill in the art would know how to use the claimed invention. Applicant respectfully requests withdrawal of the rejection, and reconsideration and allowance of claims 1, 2, 4-7, 9-18 and 20-30.

§102 Rejection of the Claims

Claims 1, 2 and 18

Claims 1, 2 and 18 were rejected under 35 U.S.C. § 102(e) for anticipation by Von Arx et al. (U.S. Patent No. 6,993,393, "Von Arx").

Applicant maintains its right to swear behind the Von Arx reference, which is cited in a rejection under 35 U.S.C. §§ 102(e). Statements distinguishing the claimed subject matter over the Von Arx reference are not to be interpreted as admissions that the reference is prior art.

Applicant has amended claims 1 and 18 to further clarify the recited subject matter. Applicant is unable to find, among other things in the cited portion of Von Arx, a handheld device configured to communicate data with an implanted device using inductive telemetry, including a battery powered controller and a battery powered telemetry coil controlled by the controller and configured to transmit and receive data to and from a telemetry coil of the implanted device using inductive telemetry, and a first battery voltage source that powers the controller, and a second battery voltage source that drives the telemetry coil, as recited in claim 1. Claim 2 depends directly on independent claim 1, and is believed to be in condition for allowance at least for the reasons provided with respect to claim 1.

With respect to independent claim 18, Applicant is unable to find, among other things in the cited portion of Von Arx, a method of powering a handheld device having a controller, a telemetry coil, and at least one battery providing a battery voltage, the method including transmitting and receiving data to and from an implanted device using inductive telemetry, where the handheld device includes a first battery providing a first battery voltage, and a second battery providing a second battery voltage, the controller being powered by the first battery voltage and the telemetry coil being driven by the second battery voltage, as recited in claim 18.

Claims 12, 15 and 18

Claims 12, 15 and 18 were rejected under 35 U.S.C. § 102(b) for anticipation by Itoga et al. (U.S. Patent No. 5,122,729, "Itoga"). Applicant respectfully traverses the rejection for at least the following reasons.

Applicant respectfully submits that "sensing" or "detecting" a distance between (or relative placement of) coils using an analog feedback loop is not "transmitting data." In addition, the cited reference does not show a controller programmed to control a coil to transmit data. Thus, Applicant respectfully submits that Itoga does not teach a "telemetry coil" as claimed in the present application.

With respect to independent claim 12, Applicant is unable to find among other things in the cited portion of Itoga, a circuit for a wireless handheld device configured for communicating data with inductive telemetry, including a telemetry coil driven by the first battery voltage source and controllable by the controller to transmit and receive data to and from a second device using inductive telemetry, as recited in claim 12.

With respect to independent claim 15, Applicant is unable to find among other things in the cited portion of Itoga, a method of powering a handheld device configured for communicating data with a second device using inductive telemetry, including activating the telemetry coil in the handheld device to facilitate inductive telemetry for transmitting and receiving data to and from the second device, as recited in claim 15.

With respect to independent claim 18, Applicant is unable to find, among other things in the cited portion of Itoga, a method of powering a handheld device having a controller, a telemetry coil, and at least one battery providing a battery voltage, the method including transmitting and receiving data to and from an implanted device using inductive telemetry, where the handheld device includes a first battery providing a first battery voltage, and a second battery providing a second battery voltage, the controller being powered by the first battery voltage and the telemetry coil being driven by the second battery voltage, as recited in claim 18.

Reconsideration and allowance of claims 12, 15 and 18 are respectfully requested.

§103 Rejection of the Claims

Claims 1, 2, 4, 11, 16, 22-28 and 30 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Itoga. Applicant respectfully traverses the rejection for at least the following reasons.

Applicant is unable to find, among other things in the cited portion of Itoga, a handheld device configured to communicate data with an implanted device using inductive telemetry, including a battery powered controller and a battery powered telemetry coil controlled by the controller and configured to transmit and receive data to and from a telemetry coil of the implanted device using inductive telemetry, as recited in claim 1. Claims 2, 4 and 11 depend,

either directly or indirectly, on independent claim 1, and are believed to be in condition for allowance at least for the reasons provided with respect to claim 1.

Claims 22 and 23 depend on independent claim 12, and are believed to be in condition for allowance at least for the reasons provided with respect to claim 12. Claims 16 and 24-26 depend, either directly or indirectly, on independent claim 15, and are believed to be in condition for allowance at least for the reasons provided with respect to claim 15. Claim 27 depends on independent claim 18, and is believed to be in condition for allowance at least for the reasons provided with respect to claim 18.

Applicant is unable to find, among other things in the cited portion of Itoga, a handheld device configured to communicate data with an implanted device using inductive telemetry, including a battery powered controller and a battery powered telemetry coil controlled by the controller and configured to transmit and receive data to and from a telemetry coil of the implanted device using inductive telemetry, as recited in claim 28. Claim 30 depends on independent claim 28, and is believed to be in condition for allowance at least for the reasons provided with respect to claim 28.

Applicant respectfully traverses the assertion that one of skill in the art would have found it obvious to use the teaching of Itoga with an implanted device. Itoga does not provide any suggestion that its power supply device with voltage sensing would function with a device implanted within human tissue. In addition, Applicant respectfully traverses the assertion that one of skill in the art would have found it obvious to provide a switch to control current in Itoga. Further, the switch disclosed in the present subject matter is used to connect a power source to a telemetry coil, and applicant cannot find a telemetry coil in Itoga.

Applicant respectfully requests withdrawal of the rejection, and reconsideration and allowance of claims 1, 2, 4, 11, 16, 22-28 and 30.

CONCLUSION

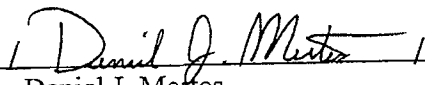
Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's representative at (715) 824-5144 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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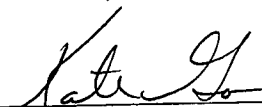
Date September 29, 2008

By 
Daniel J. Mertes
Reg. No. 55,842

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 29th day of September, 2008.

Kate Gannon

Name


Signature